

TABLE OF CONTENTS

Introduction	2- 3
Media Policy of the U.S. Attorney for the Western District of North Carolina	4-14

Appendices

Appendix A – Media Relations, U.S. Attorney’s Manual

Appendix B – 28 CFR 50.2

Appendix C – Local Rules, U.S. District Court for the
Western District of North Carolina - LcrR 23.1

Appendix D – NC State Bar Rules of Professional Conduct
Rule 3.6 Trial Publicity
Rule 3.7 Lawyer as Witness
Rule 3.8 Special Responsibilities of a Prosecutor

INTRODUCTION

U.S. Department of Justice guidelines with regard to media relations are found in the U.S. Attorneys' Manual, Title 1, Section 1-7 and are attached at Appendix A. These guidelines recognize three principal interests that must be balanced: the right of the public to know, an individual's right to a fair trial, and the government's ability to effectively enforce the administration of justice. In addition, Justice Department media relations guidelines are based on and are fully consistent with the provisions of 28 CFR § 50.2, attached at Appendix B, which governs the release of information relating to criminal and civil cases and matters by personnel of the Justice Department. The guidelines are given to all DOJ components (ATF, BOP, DEA, FBI, USAO's, USMS and the DOJ Divisions) for internal guidance purposes, and do not create any rights enforceable in law or otherwise in any party.

Responsibility for all matters involving the local media is vested in the U.S. Attorney. The U.S. Attorney exercises final authority over matters and cases being handled by her office. Any agency or department cooperating with the Office of the U.S. Attorney for the Western District of North Carolina in the issuance of a news release or participating in a news conference is expected to abide by the guidelines established by the Department of Justice, as well as internal policies established by the U.S. Attorney.

Final responsibility for all matters involving the news media and the Department of Justice is vested in the Director of the Justice Department's Office of Public Affairs. Matters of international/national/or major regional news are to be coordinated through the Justice Department's Office of Public Affairs by the U.S. Attorney's Office.

According to DOJ guidelines, each U.S. Attorney's Office and each field office of the various components of the Department shall designate one or more persons to act as point of contact on matters pertaining to the media.

Suellen Pierce is the Public Affairs Specialist for the U.S. Attorney's Office for the Western District of North Carolina. Lia Bantavani, Secretary to U.S. Attorney Anne Tompkins, is Suellen's backup. In Suellen's absence, call Lia Bantavani or First Assistant U.S. Attorney David Brown can be contacted.

Suellen Pierce, Public Affairs Specialist, 704.338.3120

Lia Bantavani, Secretary to the U.S. Attorney, 704.338.3140

David Brown, First Assistant U.S. Attorney, 704.338.3153

**MEDIA POLICY OF THE UNITED STATES ATTORNEY
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA**

The following Media Policy of the U.S. Attorney's Office for the Western District of North Carolina establishes the district's guidelines with regard to matters of public interest and in situations which may require contact with the media. This media policy has been crafted according to the Justice Department's guidelines on media relations, the Western District of North Carolina's Local Rules as they pertain to press and media relations, and the North Carolina State Bar Rules of Professional Conduct (Rules 3.6, 3.7 and 3.8), all attached at Appendices A, C and D. The U.S. Attorney's media policy also reflects the desire of the U.S. Attorney to fully report positive law enforcement efforts in order for exemplary law enforcement and prosecutorial work to be appropriately recognized and positively broadcast.

1. Preparation of Press Releases

When any division or component wishes to issue a news release or make contact with a member of the media relating to any case or matter which may be or is being prosecuted by the U.S. Attorney's Office, such release or other media contact shall be approved by the U.S. Attorney. Requests for press releases are welcomed.

All press releases will be published under the seal of the U.S. Justice Department by the U.S. Attorney's Office. Any proposed or draft press releases must be first presented to the U.S. Attorney's Office via the Public Affairs Specialist. The U.S. Attorney has final authority with regard to the contents of any press release, including comments or quotes by other law enforcement personnel.

Once a draft press release has been approved by the U.S. Attorney, copies of that draft will be forwarded, before publication, to the agency head and/or the public information officer of each agency co-announcing the release. Suggestions for corrections or additions to the release within a brief period of time prior to the actual publication of the release will be considered. If no

communication is received from agency personnel by or before broadcast time, it will be assumed that the draft release is approved by that agency.

Each news release made at the time of indictment or information will contain a statement explaining that charges are merely accusations and that defendants are presumed innocent until and unless proven guilty.

The U.S. Attorney's Public Affairs Specialist and/or her backup will be responsible for broadcasting releases for timely media coverage. Requests for publication to specific broadcast areas or outlets are welcomed.

The U.S. Attorney's Public Affairs Specialist's name appears on each press release as point of contact for further inquiries. The U.S. Attorney provides all disclosable information (see pp. 9-13; see also Appendix A) to the media either in the body of the press release or by attaching a copy of the charges and/or a list of defendants. This effectively reduces the necessity for followup questions. The Public Affairs Specialist in the U.S. Attorney's Office is responsible for answering followup questions.

2. Preparation for Press Conferences

In instances where any division or component wishes to call a press conference relating to any case or matter which may be or is being prosecuted by the U.S. Attorney's Office, such press conference shall be approved by the U.S. Attorney. Suggestions for press conferences are welcomed.

A press release is the usual method of releasing public information to the media by Department of Justice components and investigative agencies. Press conferences should be held only for the most significant and newsworthy actions, or if a particularly important deterrent or law enforcement purpose would be served. Prudence and caution should be exercised in the conduct of any press conference or other media contact.

Once it has been determined that a press conference is appropriate, the U.S. Attorney's Public Affairs Specialist and agency counterpart/s must coordinate the event to ensure (1) desirable timing with regard to other events taking place in the case, i.e. a defendant roundup or a sentencing hearing, (2) presence of all involved agency personnel, and (3) attendance by all local and interested media.

The U.S. Attorney and the involved agency heads, together with their respective public affairs personnel will coordinate development of any accompanying press release and accompanying documents (indictment, affidavit, complaints, biographical data, etc.) into a press kit. They will also coordinate the basics as to date, time, and location of the press conference. Once basics are established, the public affairs personnel will cooperate in notifying any and all necessary agency personnel of the plans for the event and notifying media outlets in sufficient time for them to plan to attend with adequate (though highly limited) information to assure their presence at the event. Decisions surrounding plans for a press conference will be made on a case-by-case basis with final approval coming from the U.S. Attorney working with the involved agency representatives.

3. Comments on open pending cases

There will be cases on public record in which no press release has been published, but in which some media interest develops. The Department of Justice guidelines regarding information which can and cannot be disclosed are considered first when such inquiries come in (see pp. 9-13; see also Appendix A). All inquiries about publicly filed federal cases should be referred to the Public Affairs Specialist in the U.S. Attorney's Office.

4. Comments on matters under general or grand jury investigation and comments on cases which are filed "under seal"

At no time shall any component or personnel furnish any statement or information that he or she knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding, endangering the overall successful completion of an investigation, or endangering the lives of involved law enforcement personnel or potential witnesses. At no time shall any component or personnel furnish any statement or information in response to media inquiries that reveals information about the existence or non-existence of any investigation. Nor shall they comment on the nature or progress of any investigation, including such things as the issuance of, or serving of, grand jury subpoenas, search warrants and accompanying affidavits, and seizure warrants or *lis pendens*.

If such documents exist unsealed in an open public record while the relative case remains in the investigative stage (pre-indictment or information), such documents must be allowed to stand on their own with no further comment made or explanation given as to the meaning of their existence or their contents.

At no time shall any component or personnel furnish any statement or information in response to media inquiries that reveals information about the existence or non-existence of any indictment or information on file officially "under seal."

At no time shall any press release or official media notification issue with regard to any indictment or information unless and until the indictment or information has been officially "unsealed" by court order.

Agency personnel and U.S. Attorney's Office personnel may neither confirm nor deny the existence of investigations, ongoing investigations, or court documents filed "under seal."

Particular note should be made of the fact that 1) official plea agreements are filed by the court as "restricted" documents and are not to be disseminated to the media by law enforcement agencies or the U.S. Attorney's Office, and 2) pre-sentence reports (PSR's) prepared by the U.S. Probation Office are always filed under seal and are never a subject for public comment.

Special care must be given to cases involving tax charges or other crimes arising from Tax Administration under the Internal Revenue Code. Special statutory prohibitions to disclosures apply to all such cases. The information that the IRS provides to the Department of Justice for the Department's use in representing the United States in federal tax litigation is confidential. The Department may use that information only in accordance with 26 U.S.C. § 6103. Its attorneys and support staff must safeguard the information to prevent unauthorized disclosure and use. *See Tax Information Security Guidelines for Federal, State, and Local Agencies* (IRS Pub. 1075 (Rev. 2-07)).

5. Comments on closed cases

When a press release is published at the time of sentencing, all comments (written or oral, regarding the defendant, the general nature of the charge, or of any related prior charges, and the sentence itself) must come from information that has previously been made a part of the federal public record, either by officially filed documentation or by oral testimony presented at pre-trial hearings, a court trial, or the sentencing hearing itself. The prosecuting Assistant U.S. Attorney is authorized, at the close of a sentencing hearing, to address the media and/or answer questions.

6. Quotes or comments by law enforcement agency heads, personnel or local law enforcement officials

Quotes or comments to the media by agency heads, agents, or local law enforcement officials on open, pending cases should not be made without first consulting with the U.S. Attorney's Office. Quotes or comments by agency heads or local law enforcement officials appearing in official press releases must be approved by the U.S. Attorney in advance. The Department of Justice vests responsibility for all matters involving the local media in the U.S. Attorney.

7. Comments on arrest activity

The U.S. Attorney's policy with regard to circumstances immediately surrounding an arrest adhere to 28 CFR § 50.2, paragraph (3)(iv), see Appendix B.

Paragraph (3)(iv) states:

Personnel of the Department of Justice, subject to specific limitations imposed by law or court rule or order, **may make public** the following information:
(iv) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest.

Disclosures should include only incontrovertible, factual matters, and **should not include subjective observations**. In addition, where background information or information relating to the circumstances of an arrest or investigation would be highly prejudicial, or where the release thereof would serve no law enforcement function, such information should not be made public.

8. Involving the news media in law enforcement activities

In cases in which a search warrant or arrest warrant is to be executed, no advance information will be provided to the news media about actions to be taken by law enforcement personnel, nor shall media representatives be solicited or invited to be present. This prohibition will also apply to operations in preparation for the execution of warrants, and to any multi-agency action.

If news media representatives are present, they may be asked to withdraw voluntarily if their presence puts the operation or the safety of individuals in jeopardy. If the news media declines to withdraw, immediate cancellation of the action should be considered by supervisory personnel if that appears to be a reasonable and practical alternative.

RELEASE OF INFORMATION IN CRIMINAL AND CIVIL MATTERS

Non-Disclosure

At no time shall any component or personnel of the Department of Justice furnish any statement or information that he or she knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

Disclosable Information

Department personnel, subject to specific limitations imposed by law or court rule or order, and consistent with the provisions of these guidelines, may make public the following information in any criminal case in which charges have been brought:

The defendant's name, age, residence, employment, marital status, and similar background information;

- A. The substance of the charge, limited to that contained in the complaint, indictment, information, or other public documents;
- B. The identity of the investigating and/or arresting agency and the length and scope of an investigation;

C. The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest. Any such disclosures shall not include subjective observations; and

D. In the interest of furthering law enforcement goals, the public policy significance of a case may be discussed by the appropriate U.S. Attorney or Assistant Attorney General.

In civil cases, Department personnel may release similar identification material regarding defendants, the concerned government agency or program, a short statement of the claim, and the government's interest.

Disclosure of Information Concerning Ongoing Investigations

A. Except as provided in subparagraph B (below), components and personnel of the Department of Justice shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress, including such things as the issuance or serving of a subpoena, prior to the public filing of the document.

B. In matters that have already received substantial publicity, or about which the community needs to be reassured that the appropriate law enforcement agency is investigating the incident, or where release of information is necessary to protect the public interest, safety, or welfare, comments about or confirmation of an ongoing investigation may need to be made. In these unusual circumstances, the involved investigative agency will consult with and obtain approval from the U.S. Attorney or Department Division handling the matter prior to disseminating any information to the media.

Comments on Requests for Investigations

Individuals, groups, or organizations often send letters to the Department of Justice or a Department component requesting that a person or entity be investigated for violations of law.

Sometimes, the requestor then conducts a press conference or releases a statement leaving an implication that an investigation will result. This can cause media inquiries.

Receipt of a request to open an investigation may be publicly acknowledged. Care should be taken to avoid any implication that the referral will necessarily lead to an investigation. It should be pointed out that there is a distinction between “reviewing a request for an investigation” and “opening an investigation.”

Any acknowledgment should state that such requests are referred to the proper investigative agency for review but that no decision has been made whether to proceed on the specific request received. Finally, it should be noted that all substantiated allegations are reviewed in light of The Principles of Federal Prosecution and the Department does not ordinarily confirm or deny the existence or status of an investigation.

The same considerations apply if there is an investigation already underway when such a request is received. If the existence of an investigation is not public, the same procedure should be followed as outlined above.

Disclosure of Information Concerning Person’s Prior Criminal Record

Personnel of the Department shall not disseminate to the media any information concerning a defendant's or subject's prior criminal record either during an investigation or at a trial. However, in certain extraordinary situations such as fugitives or in extradition cases, departmental personnel may confirm the identity of defendants or subjects and the offense or offenses. Where a prior conviction is an element of the current charge, such as in the case of a felon in possession of a firearm, departmental personnel may confirm the identity of the defendant and the general nature of the prior charge where such information is part of the public record in the case at issue.

Concerns of Prejudice

Because the release of certain types of information could tend to prejudice an adjudicative proceeding, Department personnel and all others involved should refrain from making available the following:

- A. Observations about a defendant's character;
- B. Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement;
- C. Reference to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or forensic services, including DNA testing, or to the refusal by the defendant to submit to such tests or examinations;
- D. Statements concerning the identity, testimony, or credibility of prospective witnesses;
- E. Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial;
- F. Any opinion as to the defendant's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea of a lesser offense.

Assisting the News Media

- A. Other than by reason of a court order, Department personnel shall not prevent the lawful efforts of the news media to photograph, tape, record or televise a sealed crime scene from outside the sealed perimeter.
- B. In order to promote the aims of law enforcement, including the deterrence of criminal conduct and the enhancement of public confidence, Department personnel with the prior approval of the U.S. Attorney may assist the news media in photographing, taping, recording or televising a law enforcement activity. The United States Attorney shall consider whether such assistance would:
 - 1. unreasonably endanger any individual;
 - 2. prejudice the rights of any party or other person; and
 - 3. is not otherwise proscribed by law.
- C. A news release related to any of the above activity should contain a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

D. In cases in which a search warrant or arrest warrant is to be executed, no advance information will be provided to the news media about actions to be taken by law enforcement personnel, nor shall media representatives be solicited or invited to be present. This prohibition will also apply to operations in preparation for the execution of warrants and to any multi-agency action in which Department personnel participate.

E. Justice Department employees who obtain what may be evidence in any criminal or civil case or who make or obtain any photographic, sound or similar image thereof, in connection with a search or arrest warrant, may not disclose such material to the news media without the prior specific approval of the U.S. Attorney or Assistant Attorney General, who shall consider applicable regulations and policy, or upon a court order directing such production.

If news media representatives are present, Justice Department personnel may request them to withdraw voluntarily if their presence puts the operation or the safety of individuals in jeopardy. If the news media declines to withdraw, Department personnel should consider cancelling the action if that is a practical alternative.

Exceptions to the above policy may be granted in extraordinary circumstances by the Office of Public Affairs.

Freedom of Information

Nothing contained in this policy is intended to control access to Department of Justice records which are publicly available under provisions of the Freedom of Information Act (FOIA).

COORDINATION WITH THE DEPARTMENT OF JUSTICE,

OFFICE OF PUBLIC AFFAIRS (DOJ-OPA)

In certain instances this office should coordinate its media activities with DOJ-OPA:

1. DOJ-OPA should be informed about issues that may attract major regional, national, or international attention.
2. DOJ-OPA must be informed of any press conferences of national significance.
3. DOJ-OPA should be contacted regarding in-depth story requests, or requests for stories

about matters affecting DOJ or national significance from national media organizations.

4. DOJ-OPA should be contacted for guidance prior to commenting on new policies, legislative proposals, or the Department's budgetary issues.

Sources:

28 CFR § 50.2 (2010).

United States Attorneys' Manual, Title 1, §1-7.00, (September 2010).